
TRADING TERMS AND CONDITIONS FOR THE PROVISION OF VETERINARY SERVICES

1. PARTIES:

The Clinic: Marcus Valmadre trading as Peninsula Equine Veterinarians

The Patient: _____

2. DEFINITIONS

- 2.1. The Clinic is Marcus Valmadre trading as Peninsula Equine Veterinarians, PO Box 325, Somerville, Victoria, 3912, Australia.
- 2.2. The Patient is the owner of the Animal or any person acting on behalf of and with the authority of the Patient whom the Services are provided.
- 2.3. The Animal is any creature treated by the Clinic on behalf of the Patient.
- 2.4. The Guarantor is the person(s), or entity, who agrees to be liable for the debts of the Patient.
- 2.5. The Goods are the veterinary products and or related medical goods provided by the Clinic.
- 2.6. The Services are all the services provided by the Clinic to the Animal, including any advice or recommendations.
- 2.7. The Price is the amount invoiced for the Services provided.
- 2.8. Indirect, Special or Consequential loss or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property; iv) any loss of potential winnings and breeding activity.
- 2.9. Invoices include invoices for Services provided and any Goods required to be used by the Clinic in the provision of the Services, or both.
- 2.10. Major failure is Services that are unsafe and/or substantially unfit for normal purpose and cannot reasonably be made fit within a reasonable time.
- 2.11. GST refers to Goods and Services Tax under the Goods and Services Act 1999 ("GST Act") and the terms used herein have meanings contained within the GST Act.

3. GENERAL

- 3.1. These Terms and Conditions together with the Clinic's Credit Application Form and the Clinic's written or verbal estimate form this Agreement.
- 3.2. A request for Services by the Patient is deemed to be a request incorporating these Terms and Conditions and may not be varied unless expressly agreed to by both parties in writing. In the event that an inconsistency exists and/or arises between these terms and the request, it is acknowledged between the parties that these Terms and Conditions will prevail.
- 3.3. No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed by the Clinic.
- 3.4. These Terms and Conditions are binding on the Patient, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 3.5. In these Terms and Conditions, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations.
- 3.6. Where more than one Patient completes this Agreement each shall be liable jointly and severally.
- 3.7. These Terms and Conditions cover all Animals owned by the Patient or under the direct care of the Patient.
- 3.8. If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and the offending provision shall be deemed as severed from these Terms and Conditions.
- 3.9. The Clinic may license or sub-contract all or any part of its rights and obligations without the Patient's consent.

3.10. The failure by the Clinic to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Clinic's right to subsequently enforce that provision.

3.11. The Patient acknowledges that the Clinic may detail these Terms and Conditions on its website. In this event, the Terms and Conditions on the Clinic's website shall apply to any future dealings as between the parties and the Patient is deemed to have notice of any such Terms and Conditions and/or amendments.

3.12. These Terms and Conditions must be read in conjunction with the Clinic's Credit Application Form.

3.13. The patient(s) covenant that they own the animal or are the agent of the owner and are authorised to place the order.

4. PLACEMENT OF ORDERS

4.1 A request for Services placed by the Patient with the Clinic will be considered valid when placing the request by telephone.

4.2 Any written estimate given by the Clinic shall expire thirty (30) days after the date of the written quotation. Estimates may also be provided to the Patient by verbal communication over the telephone.

4.3 All prices are based on taxes and statutory charges current at the time of the estimate. Should these vary during the period from the date of the estimate to the date of the invoice, the difference will become the responsibility of the Patient and the Patient will be invoiced for the extra charge by the Clinic.

5. PRICE

5.1. At the Clinic's sole discretion the Price shall be either:

5.1.1. As detailed on invoices provided by the Clinic to the Patient in respect of Services provided; or

5.1.2. The Clinic's quoted Price as for the provision of Services (subject to clause 5.2).

5.2. The Clinic reserves the right to change the Price in the event of a variation to the Clinic's request, and notice in writing will be provided by the Clinic within a reasonable time.

6. PROVISION OF SERVICES

6.1. The Clinic reserves their right to:

6.1.1. Decline requests for the provision of Services requested by the Patient.

6.1.2. Cancel or postpone the provision of any of all Services or appointments at their discretion.

6.1.3. Allocate qualified veterinary personnel to provide the Services as it sees fit.

6.2. Unless specified by the Clinic to the contrary in the request for Services, the Clinic does not warrant that it will be capable of providing the Services at specific times requested by the Patient during the term of this Agreement.

6.3. Subject to otherwise complying with its obligations under this Agreement, the Clinic shall exercise its independent discretion as to its most appropriate and effective manner of providing the Services and of satisfying the Patient's expectations of the provision of the Services.

6.4. The Clinic may agree to provide, on request from the Patient, additional Services not included or specifically excluded in the estimate. In this event, the Clinic shall be entitled to make an additional charge. Additional Services include, but are not limited to, additional treatment, and any additional visits and/or appointments by the Clinic after provision of the Services at the request of the Patient.

6.5. The Patient acknowledges that it provides the Clinic with the authority to carry out any emergency procedures the Clinic believes are reasonably required at the Patient's reasonable cost.

6.6. In the event that the Patient abandons the Animal with the Clinic:

6.6.1. The Patient acknowledges that the Clinic may, in its discretion, charge to the Patient reasonable boarding fees and/or give the Animal to an animal shelter of the Clinic's choice.

6.6.2. The Patient is deemed to have abandoned the Animal when the Patient leaves the Animal in the Clinic's care after a period of 7 days after the provision of the Services and/or the Patient has not paid the Clinic's invoices within 30 days after the date upon which payment is due.

7. PAYMENT AND CREDIT POLICY

7.1. For credit purposes, the two main groups of Patients are Non-Account Patients and Account Patients.

7.2. Non-Account Patients

7.2.1. The Patient must make full payment of the Price upon provision of the Services.

7.3. Account Patients

7.3.1. Account Patients must make full payment to the Clinic within thirty (30) days from the date of issue of invoice(s) for the Services.

Credit

7.5 Credit will only be granted at the sole discretion of the Clinic and upon submission of a completed Application for Credit Form.

7.6 Any credit granted may be revised by the Clinic at any time and at its discretion.

7.7 The Clinic reserves the right to withdraw any credit facility upon any breach by the Patient of these Terms of Conditions or upon the Patient being subject to any legal proceedings. The Patient agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.

8. DISHONOUR OF CHEQUE

8.1. If any cheque issued by the Patient or by any third party in payment of the Price is dishonoured:

8.1.1. The Clinic may refuse to provide any further Services until satisfactory payment is received in full, including bank fees and charges;

8.1.2. The Clinic is entitled to treat the dishonour of the Patient's cheque as a repudiation of this Agreement and to elect between terminating this Agreement or affirming this Agreement, and in each case claiming and recovering compensation for indirect, special or consequential loss or damage suffered from the Patient.

8.1.3. The Patient may be liable for a dishonoured cheque fee of \$15.00.

9. DEFAULT

9.1. Invoices issued by the Clinic for Non-Account Patients, shall be due and payable upon the provision of the Goods and/or the completion of the Services. Invoices issued by the Clinic for Account Patients, shall be due and payable within thirty (30) days from the date of issue of invoice(s) ("Default Date") depending on terms agreed with the Clinic.

9.2. If the Clinic does not receive the Outstanding Balance for the Price on or before the Default Date, the Clinic may, without prejudice to any other remedy it may have, forward the Patient's outstanding account to a debt collection agency for further action. The Patient acknowledges and agrees that:

9.2.1. After the Default Date, the Outstanding Balance shall include, but not be limited to, all applicable fees and charges under this Agreement.

9.2.2. The Clinic may, in its discretion, charge a fee up to \$25.00 a month on monies due by the Patient to the Clinic. 9.2.3.

In the event of the Patient being in default of his obligation to pay and the overdue account is then referred to a debt collection agency, and/or law firm for collection the Patient shall be liable for the recovery costs incurred and if the agency charges commission on a contingency basis the Patient shall be liable to pay as a liquidated debt, the commission payable by the Clinic to the agency, fixed at the rate charged by the agency from time to time as if the agency has achieved one hundred per cent recovery and the following formula shall apply:

$$\frac{\text{Original Debt} \times 100}{100 - \text{Commission \% charged by the agency (including GST)}}$$

$$\text{Commission} = 100 - \text{Commission \% charged by the agency (including GST)}$$

9.2.4. In the event the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on www.prushka.com.au.

10.3 In the event where the Clinic or the Clinic's agency refers the overdue account to a lawyer the Patient shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on the indemnity basis.

10. RISK AND LIABILITY

10.1. The Patient will ensure that when providing a request for Services that there is sufficient information to enable the Clinic to provide the Services, including but not limited to, the medical history of the Animal.

10.2. The Patient is responsible to ensure that the Clinic is made aware of any special requirements relating to the Animal and that the Clinic relies upon the integrity of the information supplied to it. The Clinic takes no responsibility if the information provided is wrong or inaccurate and the Clinic relies on such information to provide the Services.

10.3. The Clinic takes no responsibility for representations made in relation to the Services by a third party or any delay in the provision of the Services to the Patient.

10.4. The Patient acknowledges that the Clinic shall not be liable for and the Patient releases the Clinic from any indirect, special or consequential loss or damage incurred as a result of delay, or failure to provide the Services or to observe any of these conditions due to an event of force majeure, being any cause or circumstance beyond the Clinic's reasonable control.

11. WARRANTY

11.1 The Clinic warrants that the rights and remedies to the Patient in this Agreement for warranty against defects are in addition to other rights and remedies of the Patient under any applicable Law in relation to the goods and services to which the warranty relates.

Warranty for Services

11.2 The Clinic warrants that if any defect in any Service provided by the Clinic becomes apparent and is reported to the Clinic within ninety (90) days of the provision of the Services (time being of the essence) then the Clinic will (at the Clinic's sole discretion) remedy the defective Service

11.3 If any Services provided by the Clinic are altered or overhauled by the Patient or caused to be repaired, altered or overhauled by the Patient without the Clinic's consent, the warranty shall cease and the Clinic shall thereafter in no circumstances be liable under the terms of the warranty.

11.4 In respect of all claims the Clinic shall not be liable to compensate the Patient for any delay in remedying the defective Services or in properly assessing the Patient's claim. The Clinic will use its best endeavors to assist the Patient with its claim.

11.5 Where the Patient has complied with the conditions of warranty for defective Services, the Clinic's liability is limited to rectifying and/or remedying the defective Services.

11.6 Any obligation on either party to do or not to do any thing or perform any action must be exercised 'reasonably'.

11.7 The Patient agrees to indemnify the Clinic for any claims made by an undisclosed owner.

Warranty for Goods

11.8 The warranty for Goods supplied shall be the current warranty provided by the manufacturer of the Goods. The Clinic will use its best endeavours to assist the Patient with any claim with respect of the Goods.

11.9 The Patient agrees to be responsible for all amounts owing to the Clinic in the event that any Goods are supplied on the basis that a manufacturer's warranty is in place and it subsequently becomes known to the parties that the warranty is void or inapplicable.

11.10 The Clinic warrants:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replace if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

11.11 Warranty for Goods shall only cover the cost of Goods. The Patient acknowledges that additional costs incurred, such as freight, must be borne by the Patient.

11.12 If the Patient is in default of any payment to the Clinic after a written request has been made, the warranty shall cease and the Clinic shall thereafter in no circumstances be liable under the terms of the warranty.

11.13 The Patient accepts risk in relation to the Goods when the Goods pass to his care and/or control.

Claims made under Warranty

11.14 Claims for warranty should be made in one of the following ways:

11.14.1 The Patient must send the claim in writing together with proof of the order to the Clinic at PO Box 325, Somerville, Victoria, 3912, Australia;

11.14.2 The Patient must email the claim together with the proof of order to the Clinic on accountspev@live.com.au.

11.14.3 The Patient must contact the Clinic on the Clinic's business number 0407 432 499

11.15 Goods where a claim is made are to be returned to the Supplier or are to be left in the state and conditions in which they were delivered until such time as the Supplier or its Agent has inspected the Goods. Such inspection is to be carried out within a reasonable time after notification.

12. TERMINATION AND CANCELLATION

Cancellation by Clinic

12.1. The Clinic may cancel any appointment for the provision of Services to which these Terms and Conditions apply by giving written and/or verbal notice to the Patient. On giving such notice the Clinic shall repay to the Patient any sums paid in respect of the Price. The Clinic shall not be liable for any indirect, special or consequential loss or damage whatever arising from such cancellation.

12.2. Without prejudice to the Clinic's other remedies at law, the Clinic shall be entitled to cancel an appointment or all or any part of the provision of Services which remains unfulfilled and all amounts owing to the Clinic shall, whether or not due for payment, become immediately payable.

Cancellation by Patient

12.3. If the Patient fails to attend any appointment and/or cancels an appointment without at least twenty-four (24) hours notice to the Clinic, the Patient shall, at the discretion of the Clinic, be liable for a \$33.00 No Show Fee.

13. SET-OFF

13.1. The Patient shall have no right of set-off in any suit, claim or proceeding brought by the Clinic against the Patient for default in payment.

13.2. The Patient acknowledges that the Clinic can produce this clause in bar of any proceeding for set-off.

14. INSURANCE

14.1. There should be no obligation on the Clinic to effect any insurance cover pursuant to this agreement. The Patient is responsible to effect whatever insurance cover he requires at his own expense with respect to the Animal.

15. JURISDICTION

15.1. This Agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.

16. PRIVACY ACT 1988

16.1. The Patient and/or the Guarantor/s agrees;

16.1.1. For the Clinic to obtain from a credit reporting agency a credit report containing personal credit information about the Patient and Guarantor/s in relation to credit provided by the Clinic.

16.1.2. That the Clinic may exchange information about the Patient and the Guarantor/s with those credit providers either named as trade referees by the Patient or named in a consumer credit report issued by a credit reporting agency.

16.1.3. The Patient consents to the Clinic being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).

17. ENTIRE AGREEMENT

17.1. These Terms and Conditions as defined in Clause 3.1 constitute the whole Agreement made between the Patient and the Clinic.

17.2. This Agreement can only be amended in writing signed by each of the parties.

17.3. All prior discussions and negotiations are merged within this document and the Clinic expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.

17.4. Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.

I/We understand and agree to be bound by the Terms and Conditions set out herein.

NAME:

NAME:

POSITION
HELD:.....

POSITION
HELD:.....

DATE:/...../20...

by Submitting this form
you understand & accept
our terms and condition